

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No: 06-80158-Cr-Ryskamp/Hopkins

UNITED STATES OF AMERICA,
Plaintiff,

vs.

ANTHONY R. MASILOTTI,
Defendant.

_____ /

PLEA AGREEMENT

The United States of America and ANTHONY R. MASILOTTI, (hereinafter referred to as the “defendant”) enter into the following agreement:

1. The defendant agrees to plead guilty to the Information filed in this case, which charges the defendant with Conspiracy to commit Honest Services Fraud and to impede the function of the Internal Revenue Service, in violation of Title 18, United States Code, Section 371.

2. The defendant is aware that the sentence will be imposed by the Court after considering the Federal Sentencing Guidelines and Policy Statements (hereinafter “Sentencing Guidelines”). The defendant acknowledges and understands that the Court will compute an advisory sentence under the Sentencing Guidelines and that the applicable guidelines will be determined by the Court relying in part on the results of a Pre-Sentence Investigation by the United States Probation Office (“Probation Office”), which investigation will commence after the guilty plea has been entered. The defendant is also aware that, under certain circumstances, the Court may depart from the advisory sentencing guideline range that it has computed, and may raise or lower that advisory sentence under the Sentencing Guidelines. The defendant is further aware and understands that the

Court is required to consider the advisory guideline range determined under the Sentencing Guidelines, but is not bound to impose that sentence; the Court is permitted to tailor the ultimate sentence in light of other statutory concerns, and such sentence may be either more severe or less severe than the Sentencing Guidelines' advisory sentence. Knowing these facts, the defendant understands and acknowledges that the Court has the authority to impose any sentence within and up to the statutory maximum authorized by law for the offenses identified in paragraph 1 and that the defendant may not withdraw the plea solely as a result of the sentence imposed.

3. The defendant also understands and acknowledges that the Court may impose a statutory maximum term of imprisonment for the crime charged in the Information of up to five (5) years, followed by a term of supervised release of up to three (3) years. In addition to a term of imprisonment and supervised release, the Court may impose a fine of up to \$250,000, and will order forfeiture of assets as provided in this Agreement. The Court may also order restitution.

4. The defendant further understands and acknowledges that, in addition to any sentence imposed under paragraph 3 of this Agreement, a special assessment in the amount of \$100 will be imposed on the defendant. The defendant agrees that any special assessment imposed shall be paid at the time of sentencing.

5. The Office of the United States Attorney for the Southern District of Florida (hereinafter "Office") reserves the right to inform the Court and the Probation Office, for their respective consideration, of all facts pertinent to the sentencing process, including all relevant information concerning the offenses committed, whether charged or not, as well as concerning the defendant and the defendant's background. Subject only to the express terms of any agreed-upon

sentencing recommendations contained in this Agreement, this Office further reserves the right to make any recommendation as to the quality and quantity of punishment.

6. The United States and the defendant agree that, although not binding on the Probation Office or the Court, they will jointly recommend that the Court impose a sentence within the advisory sentencing guideline range produced by application of the Sentencing Guidelines. Although not binding on the Probation Office or the Court, the United States and the defendant further agree that, except as otherwise expressly contemplated in this Plea Agreement, they will jointly recommend that the Court neither depart upward nor depart downward under the Sentencing Guidelines when determining the advisory sentencing guideline range in this case. However, nothing in this Agreement should be construed as preventing either the defendant or the United States from presenting factual information to the Court or the Probation Office which would assist the Court in making its sentencing determination under Title 18, United States Code, Section 3553.

7. Although not binding on the Probation Office or the Court, the defendant and the government agree that the defendant profited more than \$7,000,000 and less than \$20,00,000 as a result of his criminal conduct.

8. The United States agrees that it will recommend at sentencing that the Court reduce by three (3) levels the sentencing guideline level applicable to the defendant's offense, pursuant to Section 3E1.1 of the Sentencing Guidelines, based upon the defendant's recognition and affirmative and timely acceptance of personal responsibility. However, the United States will not be required to make any sentencing recommendation described in any paragraph of this Agreement if the defendant: (1) fails or refuses to make full, accurate and complete disclosure to the Probation Office of the circumstances surrounding the relevant offense conduct; (2) is found to have misrepresented

facts to the government prior to entering this Plea Agreement; (3) commits any misconduct after entering into this Plea Agreement, including but not limited to committing a state or federal offense, violating any term of release, or making false statements or misrepresentations to any governmental entity or official; or (4) fails to abide by the obligations imposed in this Agreement, including the obligation that the defendant cooperate fully with the Internal Revenue Service concerning the correct ascertainment, assessment and collection of any and all federal personal income taxes due for the time period from 2002 through the present.

9. In consideration of the United States foregoing more serious charges, including, but not limited to money laundering (18 U.S.C. §§ 1956 and 1957), substantive mail and wire fraud (18 U.S.C. §§ 1341, 1343, and 1346), and the making of materially false statements to the government (18 U.S.C. § 1001), the defendant understands and agrees that consideration of the defendant's prompt acceptance of responsibility as outlined in the preceding paragraph is fully captured and taken into account by the statutory maximum of five (5) years' imprisonment as reflected in the charge contained in the Information. In other words, the defendant agrees, understands and knowingly waives any legal argument he may have to urge the Court to consider any lesser sentence as a result of the defendant's acceptance of responsibility for the commission of the instant crime.

10. Although not binding on the Court or the United States Probation Office, the defendant and the United States jointly agree that if the advisory Sentencing Guideline range as found by the Court exceeds 60 months' imprisonment, the parties will jointly recommend a sentence of 60 months' imprisonment absent a motion by the United States to depart downward based on substantial assistance.

11. In exchange for this Agreement, and in exchange for the Agreement of the defendant's brother Paul F. Masilotti to execute a consent to forfeit his interest in the property outlined in paragraph 13 (c) herein, and in consideration of the defendant's admission of guilt in this matter, the United States agrees to not seek to hold the defendant's brother, Paul F. Masilotti, criminally liable for the conduct described in the Aggregates Section of the Information.

12. In further exchange for this Agreement, and the defendant's full compliance with its terms and conditions, including the defendant's plea of guilty, the United States agrees to not bring additional charges against the defendant for the conduct outlined in the Information, or any other conduct known to the government at the time that the defendant's guilty plea is entered.

13. Defendant agrees to forfeit to the United States voluntarily and immediately all of his right, title and interest to any and all assets which are subject to forfeiture pursuant to Title 28, United States Code, Section 2461 and Title 18, United States Code, Section 924(d)(1) which are in the possession and control of the defendant or nominees. Those assets include the following:

a. The sum of \$175,000 in cash, which money is to be transferred into the escrow account of the defendant's counsel, and given to the Internal Revenue Service upon the acceptance of this Plea Agreement by the Court;.

b. All that lot or parcel of land, together with its buildings, appurtenances, improvements, fixtures, attachments, and easements, located in Martin County, Florida, and more particularly described in paragraph b of the forfeiture provision of the Information.

c. All that lot or parcel of land, together with its buildings, appurtenances, improvements, fixtures, attachments, and easements, located in Brevard County, Florida, with tax

account numbers 3010494, 3010495, 3001886, and more particularly described in paragraph c of the forfeiture provision of the Information.

d. All interest in Micco Eastern Holdings, LLC, EIN: 20-2897958.

e. All interest in ARM Family Land Trust.

The defendant agrees that the above listed property is property constituting, or derived from proceeds of an honest services fraud as set forth in the Information.

14. Defendant further agrees to fully cooperate and assist the Government in the forfeiture of the listed assets and to take whatever steps are necessary to pass clear title to the United States, including, but not limited to, the surrender of the funds listed in paragraph 13 (a) to the United States, the surrender of documents of title, execution of any documents necessary to transfer his interest in any of the above property to the United States, execution of a consent to forfeiture or other documents as may be needed to fully accomplish the forfeiture and vest title in the United States. Defendant further knowingly and voluntarily waives the following rights as to assets subject to forfeiture: (1) all constitutional, legal and equitable defenses to the forfeiture of the assets in any judicial or administrative proceeding; (2) any judicial or administrative notice of forfeiture and related deadlines; (3) any jeopardy defense or claim of double jeopardy, whether constitutional or statutory; (4) any claim or defense under the Eighth Amendment to the United States Constitution, including any claim of excessive fine, to the forfeiture of these assets by the United States; and (5) any right to appeal any order of forfeiture entered by the Court pursuant to this Plea Agreement. Defendant further understands that the forfeiture of these assets shall not be treated as satisfaction or offset against any fine, restitution, cost of imprisonment, or any other penalty this Court may impose on the defendant.

The defendant shall make a full, complete and accurate disclosure of all assets in which the defendant has any interest or over which defendant exercises control, as well as those assets which are held or controlled by a nominee(s).

15. The defendant agrees that he will cooperate fully with the Internal Revenue Service in determining and paying any tax liabilities, penalties and interest of any parties and any years related to this prosecution, including but not limited to any personal tax liabilities for tax years 2002-through the present. To this end, the defendant agrees to file accurate income tax returns for tax years 2002 through the present, as soon as possible upon the signing of this Plea Agreement, and in any event, no later than the time of the defendant's sentencing. The defendant further agrees that the Court may order the payment of any tax liabilities established as of the date of sentencing as restitution. The defendant further agrees to waive the statute of limitations with respect to the assessment and collection of his taxes due and owing for those tax years. The defendant also agrees to provide the Internal Revenue Service with all requested documents and information for purposes of any civil audits, examinations, collections, or other proceedings. The defendant further agrees to waive any and all rights he may otherwise have, including causes of action, regarding disclosure of return information or any other information by the Internal Revenue Service or this Office for any purpose. Nothing in this Agreement shall limit the Internal Revenue Service in its collection of any taxes, penalties or interest due from the defendant or other parties.

16. Nothing in this Agreement shall limit the IRS in its civil determination, assessment, and collection of any taxes, interest, and/or penalties that the defendant may owe. The defendant agrees that any statements made by him to the IRS and/or in this agreement shall be admissible against the defendant without any limitation in any civil or criminal proceeding and the defendant

stipulates to the authenticity and admissibility, in any civil or criminal proceeding, of any documentation provided by the defendant to the IRS. The defendant hereby waives any protection afforded by Rule 410 of the Federal Rules of Evidence and Rule 11(f) of the Federal Rules of Criminal Procedure with regard to any such statements and documentation. In the event that the defendant withdraws from this agreement prior to pleading guilty and/or fails to fully comply with any of the terms of this agreement, the United States will, at its option, be released from its obligations under this agreement, but under no circumstances shall the defendant be released from the agreements and waivers made by her/him in this and the preceding two paragraphs.

SENTENCING APPEAL WAIVER

17. The defendant is aware that Title 18, United States Code, Section 3742 affords the defendant the right to appeal the sentence imposed in this case. Acknowledging this, in exchange for the undertakings made by the United States in this Plea Agreement, the defendant hereby waives all rights conferred by Section 3742 to appeal any sentence imposed, including any restitution order, or to appeal the manner in which the sentence was imposed, unless the sentence exceeds the maximum permitted by statute or is the result of an upward departure and/or a variance from the guideline range that the Court establishes at sentencing. The defendant further understands that nothing in this agreement shall affect the government's right and/or duty to appeal as set forth in Title 18, United States Code, Section 3742(b). However, if the United States appeals the defendant's sentence pursuant to Section 3742(b), the defendant shall be released from the above waiver of appellate rights. By signing this Agreement, the defendant acknowledges that he has discussed the appeal waiver set forth in this Agreement with his attorney. The defendant further agrees, together

with the United States, to request that the Court enter a specific finding that the defendant's waiver of his right to appeal the sentence to be imposed in this case was knowing and voluntary.

18. The defendant is aware that the sentence has not yet been determined by the Court. The defendant also is aware that any estimate of the probable sentencing range or sentence that the defendant may receive, whether that estimate comes from the defendant's attorney, the government, or the Probation Office, is a prediction, not a promise, and is not binding on the government, the Probation Office or the Court. The defendant understands further that any recommendation that the government makes to the Court as to sentencing, whether pursuant to this agreement or otherwise, is not binding on the Court and the Court may disregard the recommendation in its entirety. The defendant understands and acknowledges, as previously acknowledged in paragraph 2 above, that the defendant may not withdraw his plea based upon the Court's decision not to accept a sentencing recommendation made by the defendant, the government, or a recommendation made jointly by both the defendant and the government.

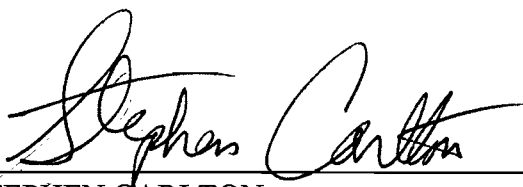
19. This is the entire agreement and understanding between the United States and the defendant. There are no other agreements, promises, representations, or understandings.

R. ALEXANDER ACOSTA
UNITED STATES ATTORNEY


Date: 1/11/07

By: 
JOHN S. KASTRENAKES
ASSISTANT UNITED STATES ATTORNEY


Date: 1/11/07

By: 
STEPHEN CARLTON
ASSISTANT UNITED STATES ATTORNEY

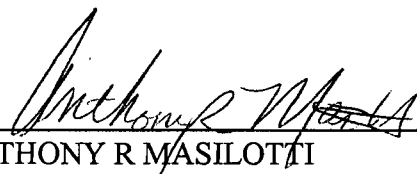
Date: 1/11/07

By: 
JOHN F. O'DONNELL, ESQ.
ATTORNEY FOR DEFENDANT

Date: 1/11/07

By:  for: MARCUS BEATON, ESQ.
HOWARD M. SREBNICK, ESQ. FOR
ATTORNEY FOR DEFENDANT

Date: 1/11/07

By: 
ANTHONY R MASILOTTI
DEFENDANT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 06-80158-Cr-Ryskamp/Hopkins

UNITED STATES OF AMERICA,
Plaintiff,

vs.

ANTHONY R. MASILOTTI,
Defendant.

FACTUAL BASIS FOR GUILTY PLEA

The United States and the defendant, Anthony R. Masilotti agree that the following facts would be proven by the Government beyond a reasonable doubt had this case proceeded to trial.

1. In November 1998, and again in November 2002, Anthony R. Masilotti was elected to separate four-year terms as a Palm Beach County Commissioner for District 6 which District covered the western portions of Palm Beach County, including Wellington and Royal Palm Beach. After each election, Masilotti took and executed an oath of office swearing to uphold the Constitutions and Governments of the United States of America and State of Florida.
2. As a sworn public official, Anthony R. Masilotti had a legal and ethical responsibility to perform his duties free from fraud, self-enrichment and self-dealing. Masilotti also had an obligation to disclose personal financial interests that might affect his actions as a public official. Masilotti knowingly failed to follow this obligation on several occasions and conspired with others to defraud the public of their right to Masilotti's honest services as will be detailed below. During the course of this conspiracy, it was reasonably foreseeable that the U.S. mails and interstate wires would be utilized in furtherance of the conspiracy, and Anthony R. Masilotti and/or his co-conspirators on various occasions actually utilized and caused to be utilized the U.S. mails and interstate wires in connection with the honest services fraud. Further, at least one of the overt acts in furtherance of this conspiracy occurred in the Southern District of Florida.
3. The United States would prove that Anthony Masilotti utilized his public position as a county commissioner to advance and conceal his secret financial interest with others in three separate real estate transactions and also his receipt of significant gratuities from a former commercial developer who did business with Palm Beach County.

4. As to the Martin County land deal, which involved about 3,500 acres of real property known as Nine Gems, Masilotti provided \$275,000 in down payments to Jeff Lee and David Lee by February 2002 to eventually secure 150 acres of this land. Masilotti informed the Lees as early as his first \$25,000 payment to them in October 2000, that he wanted to keep his ownership interest in this real property concealed.
5. In or around July 2002, Masilotti contacted attorney William R. Boose, III for the purpose of assisting him in Masilotti's purchase of a parcel of land in the Nine Gems tract. Mr. Boose created a Florida land trust naming Richard C. Crum as Trustee, and Masilotti's then-wife, Susan L. Masilotti, as the sole beneficiary. The Crum Trust was created for the purpose of keeping Masilotti's ownership interest a secret from the public. In September 2002, the Crum Trust bought the approximate 150 acre tract of land in the Nine Gems tract from the Lee brothers. Masilotti provided all of the funding from his family assets, even though his wife provided a check to the Boose law firm that made it appear that the investment was hers alone. Boose also agreed to provide this legal service to Masilotti without charge, and only charged Masilotti for expenses and paralegal time.
6. On July 16, 2003, Masilotti participated in a joint meeting of the Palm Beach and Martin County Commissions in Jupiter, Florida. At that meeting, Masilotti advocated for the purchase of the Nine Gems tract by the South Florida Water Management District, which would have included land owned by the Crum Trust. At that time, Masilotti intentionally failed to disclose that he had a concealed financial interest in the land through the Crum Trust, and that Masilotti and his family would benefit personally if the land was sold to a public entity.
7. On August 21, 2003, Masilotti briefly attended a meeting at the South Florida Water Management District and again voiced his support as a Commissioner for the proposed public purchase of the Nine Gems parcels. Masilotti also failed on this occasion to disclose that he or his family had a personal financial interest in the proposed purchase.
8. In or around March 2004, as the time for signing a contract for the actual sale of the Nine Gems tract approached, Masilotti participated in a conference call between William R. Boose, III, Harvey E. Oyer, III, (attorney for the Lee brothers), Jeff Lee and David Lee. At that time, Masilotti was aware that the beneficial ownership affidavits of the Crum Trust would be required. To avoid that disclosure, and to keep Masilotti's personal financial interest concealed, Masilotti endorsed the idea of a land exchange that would allow his interest to remain hidden. In the conference call, Masilotti and Boose demanded an exchange of land with the Lee brothers that would remove the Crum Trust from owning any land to be sold to the Water Management District. Boose and Masilotti also required that the Lees pay the closing costs of such an exchange and further demanded that they allow Masilotti to select certain acreage in the future once the Lees bought back from Masilotti 110 acres of land.

9. As a result of this land exchange, Masilotti's ownership interest remained hidden. When the Water Management District paid the Lees for part of the Nine Gems tract in a staggered closing, the Lees in turn bought a 110 acre tract from the Crum Trust. As a result of this transaction, Masilotti and his family received \$1.7 million which Masilotti divided with his wife. They later used the proceeds to buy separate \$100,000 certificates of deposits (CD's) at different banks.
10. Later, in October 2004, when it became apparent that the Lees would not allow Masilotti to select any 40 acres he wished, the government would establish through an internal e-mail in the Boose law firm that Masilotti communicated a message which was intended to be communicated to Harvey Oyer that Masilotti would use Masilotti's public position to make trouble for the South Florida Water Management District in future closings.
11. As to the real estate transaction commonly known as the Diocese transaction which occurred from 2003-04, the United States would prove that Masilotti used his public office to advocate the sale of the land to co-conspirator Daniel N. Miteff and Miteff's partners, and solicited the Village Manager of Royal Palm Beach to send an official letter to Masilotti as county commissioner outlining the Village's desire for the Diocese to assure it sold the land to a bidder that would provide a public park. Masilotti made these requests without disclosing that he had a financial interest in the transaction and in the Diocese awarding the bid to Daniel N. Miteff, that is, he expected to be compensated –and later was in fact compensated– by Miteff for his efforts on Miteff's behalf.
12. Later, during meetings with the county engineer concerning traffic concurrency issues on the Diocese property both Miteff and Masilotti intentionally failed to disclose Masilotti's concealed financial interest to the county engineer or his staff. Masilotti also did not disclose to the county engineer or his staff that he had a financial partnership with the Lees in a parcel of real estate in Martin County, Florida.
13. The United States would further prove that Masilotti was paid approximately \$50,000 by Miteff after the traffic issue was resolved and he was able to sell the contract to GL Homes. That payment took place at Atlantis Hotel and Casino in Nassau, Bahamas in February 2004 by Miteff paying down a large portion of Masilotti's \$40,000 gambling debt. Miteff gave Masilotti most of this money in gaming chips at the Casino.
14. As Masilotti's conduct concerning Palm Beach Aggregates is concerned, Masilotti had his brother, Paul F. Masilotti, contact Enrique Tomeu, the President of Palm Beach Aggregates for the purpose of buying an option to purchase sixty (60) acres of land within a larger 1,200 acre tract owned by the Aggregates. This land lay within unincorporated central, western Palm Beach County.
15. In or about March 2004, Anthony Masilotti provided \$50,000 to Paul F. Masilotti to buy this option for \$100,000. Paul Masilotti provided the remaining \$50,000. The option price was

\$100,000 and allowed the purchase of 60 acres of land for \$1.8 million. This option was never recorded with the Palm Beach County Clerk of Court. Anthony Masilotti and Paul Masilotti decided to form a trust, the ARM Family Land Trust, that would list Paul Masilotti as the sole beneficiary, but in reality would be used to hide Anthony Masilotti's concealed partnership interest with Paul Masilotti in the option agreement.

16. Shortly after receiving this option, Masilotti first voted before the Board of County Commissioners to allow Aggregates to have Florida Power and Light build a power plant on a different portion of Aggregates property within Palm Beach County. Masilotti voted on this measure in February 2004 without disclosing to the public that he and his brother Paul Masilotti had a concealed financial interest in the Aggregates property holdings.
17. Next, Anthony Masilotti appeared as a County Commissioner at a meeting of the Village Council for the Village of Wellington, and advocated for the annexation of the Palm Beach Aggregates' 1,200 acre parcel by the Village of Wellington. Masilotti knew at the time that such annexation would allow for residential development of the 1,200 acres of land owned by the Aggregates, and that accordingly the value of the 1,200 acres would greatly increase. Masilotti was aware that the Wellington Village Council voted to table the proposal to annex the Aggregates land.
18. Less than two weeks after the Wellington Village Council tabled the annexation proposal, Masilotti participated in a meeting of the Palm Beach County Commission where a discussion ensued regarding the possibility of giving Palm Beach Aggregates the same residential development rights as might be granted by Wellington, but only if the Aggregates agreed to stay in unincorporated Palm Beach County. During this discussion and the meeting of the Commission held on April 22, 2004, Masilotti intentionally failed to disclose that he held a concealed financial interest in the 1,200 acres of land being considered.
19. In the Fall of 2004, Masilotti traveled with Paul Masilotti and David Lee to Micco, Brevard County to look at certain undeveloped real property. Masilotti saw a 300 acre tract lying north of Micco Road and west of U.S. 1. Subsequently, Anthony Masilotti looked at the same property with Lee and Tomeu. Shortly thereafter, the Aggregates purchased that property through Micco Eastern Holdings, LLC ("Micco Eastern") in February 2005 for approximately \$7.7 million. In March 2005, Lennar Homes signed a contract for the purchase of the 1,200 acres from Palm Beach Aggregates for \$300 million.
20. In April 2005, the ARM Family Land Trust agreed to release its option to buy 60 acres of land inside the 1,200 tract. In exchange for the release of the option, Palm Beach Aggregates, as the sole member of Micco Eastern Holdings LLC, agreed to transfer 100% beneficial control and ownership of Micco Eastern to the ARM Family Land Trust. No deed was recorded in Brevard County to reflect this change in beneficial ownership. As a result of this transfer and exchange, Anthony Masilotti's interest remained concealed at all times, and that for payment of \$100,000, Anthony Masilotti and Paul Masilotti controlled property

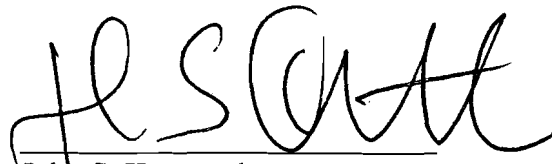
through Micco Eastern worth approximately \$8 million.

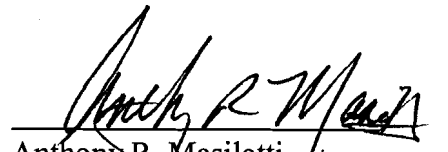
21. As to Masilotti's federal personal income taxes, Masilotti and Miteff impaired and impeded the lawful function of the Internal Revenue Service in the ascertainment, assessment and collection of federal personal income taxes due and owing by Anthony Masilotti for calendar year 2004, by failing to report the approximate \$50,000 payoff from Daniel Miteff and also by deducting as business expenses approximately \$29,000 in gambling debts. The total tax due and owing by Masilotti for 2004 is approximately \$28,512.00.

Respectfully submitted,

R. ALEXANDER ACOSTA
UNITED STATES ATTORNEY

By:


John S. Kastrenakes
Assistant U.S. Attorney


Anthony R. Masilotti
Defendant